IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 379 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

APPUBHAI LALLUBHAI MAVI

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu, has challenged his detention order dated 22.12.2003. By the impugned order, the petitioner-detenu is detained as a 'bootlegger', under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the detenu was also

served with the grounds of detention.

In the grounds of detention, there is a mention about two criminal cases, which are filed under the Bombay Prohibition Act. It is alleged that he is dealing in Indian Made Foreign Liquor. The authority, after having been satisfied about the aforesaid bootlegging activity of the petitioner, has detained him under PASA, as a 'bootlegger'.

The detaining authority has also relied upon the statements of secret witnesses in the order. The learned Advocate for the petitioner submitted that after the last registered offence, there is a delay of about more than two months in passing the detention order. He submitted that even though the statements of witnesses were recorded, after a period of one month after the date of the incident and only in order to cover up the delay and only in order to detain the petitioner under PASA, such statements were recorded at a later point of time. It is submitted by her that after verifying the veracity of the statements of secret witnesses, on the very next day, the detention order is passed. The learned Advocate for the petitioner, therefore, submitted that the impugned order is vitiated, because, in such circumstances, it cannot be said that the Detaining Authority has arrived at the subjective satisfaction properly. To substantiate this point, the learned Advocate for the petitioner has relied upon the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696, wherein this Court observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is

that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.

... ..."

So far as the delay in passing the order is concerned, there is no proper explanation in the reply. A learned single Judge has taken a view that only with a view to cover up the gap between the date of incident and the date of passing the detention order the statements of witnesses were recorded. On this point, the learned Advocate for the petitioner relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

" ... ...

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR

1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.

... ..."

In that view of the matter, since the delay of about two months after the last registered case is not explained appropriately in the reply, even though the said point is taken in the petition specifically, on the aforesaid point, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

(P.B. Majmudar, J.)

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(apj)